



Agricultural Marketing Service

7 CFR Part 1206

[Doc. No. AMS-SC-21-0101]

Adjustments to Mango Board Representation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes to the representation of the National Mango Board (Board) under the Mango Promotion, Research and Information Order (Order).

This action would allocate the seven foreign producer Board seats to the top five mango exporting countries, based on mango volume exported to the United States, with an additional seat allocated to the top exporting country, and one at-large seat. In addition, the proposal would require no more than one Board member be employed by or be affiliated with the same company. The Board administers the Order with oversight by Agricultural Marketing Service (AMS). This rule was recommended by the Board and is issued with the concurrence of AMS.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: George Webster, Marketing Specialist, Mid Atlantic Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400

Independence Avenue, SW, Room 1406-S, Stop 0244, Washington, DC 20250-0244; Telephone: (202) 365-4172; or Email: George.Webster@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order (7 CFR part 1206). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this change to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with United States Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on adjustments to the Board's representation under the Order. The Board administers the Order with oversight by AMS. The Order took effect in November 2004 (69 FR 59120), and assessment collection began in January 2005 for fresh mangos. The program is funded by assessments on first handlers and importers of fresh mangos, and it focuses on maintaining and expanding existing markets and uses for fresh mangos through its research, promotion, and information efforts. This proposed action would allocate the seven foreign producer Board seats as follows: one to each of the top five exporting countries, based on mango volume exported to the United States; one additional seat allocated to the top exporting country; and one at-large seat allocated to a foreign producer from any country exporting mangos

to the United States. This would help ensure that the countries that export the most mangos to the U.S. would be represented on the Board. Conforming changes would also be made to the nomination procedures to facilitate the reallocation of foreign producer Board seats.

Additionally, the proposal would require that no more than one member per company be represented on the Board at the same time. This change would give more companies an opportunity to serve on the Board. The proposed changes were recommended by the Board at its meeting on November 18, 2021. The Board was not unanimously in favor of this recommendation. The resulting vote from the motion was as follows; ten members voted in favor, three members were not in favor, two members abstained from voting, one member was absent, and two Board seats were vacant. At the Board's meeting on March 15, 2022, AMS presented two options regarding the transition period of the foreign producer Board seats: (1) Gradually make these changes as Board terms cycled out; or (2) Enact these changes immediately and potentially risk having to ask one or more Board members to step down from their position in order to meet the new representation requirements. However, if after the 2023 Board is selected, the foreign producer seats align with the representation requirements, no action would be needed. After much discussion, the Board recommended that these changes be enacted immediately. The resulting vote from the motion was 11 members in favor, four members not in favor, two members absent, and one Board seat was vacant.

Adjustment of Membership

Section 1206.30(a) of the Order currently specifies that the Board be composed of 18 members - eight importers, one first handler, two domestic producers, and seven foreign producers - appointed by the Secretary of Agriculture (Secretary). The importer seats are allocated based on the volume of mangos imported into U.S. Customs and Border Protection (Customs) Districts identified by name and code number defined in the Harmonized Tariff Schedule of the United States. There are four districts, with two seats allocated for District I;

three seats allocated for District II; two seats allocated for District III; and one seat allocated for District IV.

The seven foreign producer seats are currently chosen by the Secretary from nominations provided by organizations of foreign mango producers and foreign mango producers who self-nominate. Both the mango industry and the Board have stated that the top countries exporting mango to the U.S. need representation on the Board to help oversee assessment allocation and be more involved in improving fruit quality, volume, demand, and consumption of mangos in the U.S.

Sections 1206.36(m) and 1206.77 of the Order allow for the Board to recommend changes to the Order as the Board considers appropriate. On November 18, 2021, and again on March 15, 2022, the Board reviewed data from the USDA, Foreign Agricultural Service (FAS), Global Agricultural Trade System (GATS)¹. After reviewing the data, discussion, and the Board wanting representation for each of the top five countries that export mangos to the U.S., the Board recommended the following: (1) five of the seven foreign producer seats shall be allocated to foreign producers from the top five exporting countries to the U.S.; (2) one additional foreign producer seat shall be allocated to the top exporting country; and (3) one seat shall be considered at-large, which means it may be allocated to a foreign producer from any country that exports mangos to the U.S. The data is summarized in Table 1 below:

Table 1: ANNUAL U.S. FRESH MANGO IMPORT QUANTITIES
BY COUNTRY OF ORIGIN IN 10,000LB UNITS

	2019	2020	2021	Average	Percent
Mexico	71,733	75,623	74,466	73,941	62.9%
Peru	11,855	16,297	16,013	14,722	12.5%
Ecuador	9,775	11,696	11,968	11,147	9.5%
Brazil	8,809	10,629	11,379	10,272	8.7%
Guatemala	2,959	2,427	3,385	2,924	2.5%

¹ <https://apps.fas.usda.gov/gats/default.aspx>

Haiti	1,839	2,562	2,671	2,357	2%
Other (15 countries)	1,718	1,849	3,180	2,249	1.9%
Total	<u>108,689</u>	<u>121,083</u>	<u>123,062</u>	<u>117,611</u>	

Source: US Department of Agriculture Global Agricultural Trade System

As shown in Table 1, over the past three years (2019-2021) 96.1 percent of the total fresh-whole mango imported into the United States was supplied by five countries: Mexico with 62.9%, Peru with 12.5%, Ecuador with 9.5%, Brazil with 8.7%, and Guatemala with 2.5%.

Furthermore, each of these countries is the main supplier of mango to U.S markets during specific times of the year. Therefore, the performance and success of each of the top five countries exporting mangos to the U.S. during their season affects the U.S. mango market, not just during their season but for subsequent mango suppliers as well.

The Board believes that it is important that each of the top five countries exporting mangos to the U.S. be represented on the Board. Further, because Mexico currently provides the majority of mangos exported to the United States, it is valuable to have multiple representatives providing insight on the situation of the mango industry in that country. Therefore, this proposal would allocate five of the seven foreign producer Board seats to each of the top five countries based on the three-year average mango volume exported to the United States, with an additional seat allocated to the top exporting country (currently Mexico). One at-large seat would continue to be allocated to a foreign producer from any country exporting mangos to the United States.

This proposed change would allow the Board's membership to better reflect the distribution of foreign mangos exported to the United States, while providing an opportunity for a more diverse pool of candidates. AMS oversees the mango program and participates in Board meetings. This proposed action is consistent with AMS's priorities and oversight of the Order.

The Board is currently conducting nominations for three foreign producer seats whose three-year term of office begins January 1, 2023. All three foreign producer members whose seats are expiring on December 31, 2022, are in their second consecutive term and are therefore

not eligible for re-appointment. Starting on January 1, 2023, the Board will have foreign producer members from the following countries: Mexico (two), Peru (one), Guatemala (one), with three open seats.

Depending upon what countries the Secretary chooses for the three open seats for the 2023 Board, in order to align with the proposed foreign producer representation, one of these open seats would need to be from Ecuador and one seat would need to be from Brazil, with one at-large member from any country that exports mango to the U.S. Since the Secretary's selections are not known, and this realignment is not currently in place, the members chosen for the three open seats whose terms begin January 1, 2023, would have to be reviewed by the Board and USDA. Should this proposal be adopted, six of the seven Board foreign producer seats would need to represent all five top exporting countries, based on the 2019-2021 three-year average volume imported into the U.S. as determined from the USDA, FAS data. Currently, that would mean that the seven foreign producer seats would be distributed as follows: Mexico two seats, Peru one seat, Ecuador one seat, Brazil one seat, Guatemala one seat, and one at-large seat.

After AMS review of the current Board representation, if the foreign producer seats are aligned with the representation requirements, no action would be taken. If the representation requirements are not met, one or more Board members may need to step down from their role if established as proposed. The Board discussed two options: (1) to allow Board members to cycle off the Board as their terms expire; or (2) to enact the proposed representation provisions immediately and potentially risk asking members to step down. The Board voted during their March 15, 2022, meeting to move forward with option 2, to immediately enact the changes. AMS oversees the mango program and participates in all Board meetings, and the Secretary is responsible for the selection of all Board members. As such, all effort would be undertaken to avoid disruption of the Board as currently established should the changes that are herein proposed be adopted.

Once the Board is appointed and realigned to represent the top five countries exporting mangos to the United States, every three years thereafter, the Board will review the USDA, FAS, data and if warranted, recommend to the USDA changes to the top five exporting countries to the United States. These recommendations would need to be made before the nomination process begins the following year.

Nominations and Appointments

Section 1206.31 establishes the procedures for nominations to obtain Board nominees for appointment. The Board discussed at its November 18, 2021, meeting, and several other occasions, allowing individuals from the same or related companies to serve on the Board at the same time. Occurrences of this nature have increased over time, especially from companies who participate in the nomination process. The concerns are mainly from U.S. importers who believe that the same few companies continue to have additional representatives appointed to the Board while they are already represented on the Board.

This situation has occurred multiple times since the Board's inception. However, with an industry focus on increasing the diversity of the Board, the Board recommended limiting the number of Board members that may represent any one affiliated business interest, however organized. Therefore, this proposal would amend § 1206.31 of the Order to add paragraph (i), which provides that no more than one Board member shall be employed by or be affiliated with a single or multiple corporations, companies, or partnerships or any other legal entities with common ownership, foreign or domestic.

This change is intended to help increase the number of organizations represented on the Board, and expand the diversity of experience, expertise, and location of members on the Board. This proposed action is consistent with AMS's priorities and oversight of the Order.

Vacancies

Section 1206.33 establishes procedures for vacancies on the Board. It describes what to do if the Board member is no longer a member of the category for which they are appointed, if a

member is not able to fulfill their position, and how to fill an unexpired term. With the Board's proposal to have no more than one member on the Board per company, this section will be updated. Section 1206.33 (d) would be added to address the situation where, if a Board member becomes employed or affiliated with another Board member's company during their term, such position would automatically become vacant.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), AMS has considered the economic impact of this action on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than \$30 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms.

According to the most recent U.S. Agricultural Census, which was published in 2017, a limited number of mangos are produced in the U.S. and territories of California, Florida, Hawaii, Texas, and Puerto Rico. The majority of U.S. demand for mangos is met by imports. In 2017, the U.S. had a total of 3,328 acres of mangos, up 322 acres (11 percent) from 2012. The Agricultural Census does not breakdown the allocation of acreage by state. According to USDA Foreign Agricultural Service data obtained from the Global Agricultural Trade System (GATS), five countries account for 96.1 percent of fresh mango imports. These countries and their respective share of the imports (from January 2019 to December 2021) include Mexico (62.9%); Peru (12.5%); Ecuador (9.5%); Brazil (8.7%); and Guatemala (2.5%).

The following are not subject to the assessment: mango producers, first handlers and importers who market or import less than 500,000 pounds of mangos, and mangos exported out of the United States.

According to Customs data, in 2021 there were 295 importers and 2 first handlers. Of these entities, 95 were subject to assessments under the Order and had 2021 import quantities of 500,000 pounds or more. There were 3 entities with import valuations exceeding \$30 million dollars. Therefore, the majority of assessed importers and first handlers (92 out of 95) may be considered small businesses.

The proposed rule seeks to increase the pool of nominees from countries that export mangos to the United States. The Board wants to receive representation from all growing regions that export mangos into the United States. The proposed rule provides an opportunity to increase diversity and would not place undue economic burden on small business importers and first handlers as they are eligible to serve on the Board. Domestic and foreign producers that are classified as small business entities are also not burdened since they are not subject to assessment under the Order, still such individuals are eligible to serve on the Board along with importers and first handlers.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. There are no Federal rules that duplicate, overlap, or conflict with this rule. In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been previously approved under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Regarding alternatives, the Board discussed in detail the option to keep the foreign producer Board member seat allocation as-is. The Board reviewed information provided from the staff that showed, since the Board's formation, all foreign producer appointments have been from the same five countries (Mexico, Guatemala, Peru, Ecuador, and Brazil), and that in 2022 the Board will have seven foreign producers representing only three countries. The Board believes that foreign producer representation should be from each of the top five countries

exporting mangos to the United States, and to have an at-large seat available to a foreign producer from any country exporting mangos to the United States. As such, this change is being proposed to help realign the Board's membership to better reflect the distribution of foreign grown mangos exported to the U.S. AMS oversees the mango program and participates in Board meetings. This proposed action is consistent with AMS's priorities and oversight of the Order.

The Board also considered allowing more than one member per company to sit on the Board at the same time. Throughout the history of the National Mango Board, there have been multiple instances where Board members from the same company served on the Board at the same time. However, the Board members agreed that the industry has grown and evolved and, therefore, it is important to increase the industry's participation on the Board and increase the diversity of individuals serving on the Board. This proposed action would revise the Order to provide that no more than one member shall be employed by or be affiliated with the same company. This change was proposed to help increase the opportunity for more company representatives to serve on the Board and to expand the diversity of experience, expertise, and location of members. AMS encourages efforts to increase the diversity of representation on the Board.

Regarding outreach efforts, the Board discussed this action during Board meetings in 2020, and in meetings during March and November of 2021, and the Board meeting in March 2022. This proposed action was also presented during the Foreign Mango Organization meeting in February 2022. Attendees from this meeting included representatives from the following countries: Mexico, Ecuador, Peru, Guatemala, Brazil, Colombia, and the Dominican Republic. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of the proposed action on small entities and we invite comments concerning the potential effects of this action.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities or citizen access to Government information and services, and for other purposes.

AMS has determined that this proposed rule is consistent with and would effectuate the purpose of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Mango, Marketing agreements, Reporting and recording requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1206 as follows:

PART 1206—MANGO RESEARCH, PROMOTION, AND INFORMATION

1. The authority citation for part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411-7425 and 7 U.S.C. 7401.

2. In § 1206.30, revise paragraph (c) and add paragraph (d) to read as follows:

§ 1206.30 Establishment and membership.

* * * * *

(c) *Foreign producers.* The seven Board seats for foreign producers of mangos shall be allocated based on a three-year average volume of mangos exported to the United States from a foreign country as follows:

(1) Five of the seven seats shall be allocated to foreign producers from the top five exporting countries to the United States;

(2) One additional seat shall be allocated to the top exporting country that exports the most mangos to the United States; and,

(3) The one remaining seat shall be considered at-large, which means it may be allocated to a foreign producer from any country that exports mangos to the United States.

(d) *Adjustment of membership.* The Board seats will be adjusted as follows:

(1) At least once every five years, the producer and importer seats shall be reviewed. The Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation, and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

(2) Every three-years the foreign producer seats shall be reviewed. A three-year average volume of mangos exported from a foreign country to the United States will determine the top five mango exporting countries. The three-year average will be based on import volume data from the USDA, Foreign Agricultural Service, Global Agricultural Trade System for the three complete preceding years. If warranted, the Board will recommend to the Department that foreign producer membership on the Board be altered to reflect the three-year average volume of mangos exported to the United States by the top five exporting countries.

3. In § 1206.31, revise paragraph (g) and add paragraph (i) to read as follows:

§ 1206.31 Nominations and appointments.

* * * * *

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango producers. Organizations of foreign mango producers shall submit two nominees for each position, and

foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States as specified in § 1206.30.

* * * * *

(i) No more than one member shall be employed by or be affiliated with a single or multiple corporations, companies, or partnerships or any other legal entities with common ownership, foreign or domestic.

4. In § 1206.33, add paragraph (d) to read as follows:

§ 1206.33 Vacancies.

* * * * *

(d) In the event that a Board member becomes employed or affiliated with another Board member's corporation, company, partnership or other legal entity during the Board member's term, such position shall automatically become vacant.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

[FR Doc. 2022-23661 Filed: 10/31/2022 8:45 am; Publication Date: 11/1/2022]